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No. 07-635

In the Supreme Court of the United States

BRUCE PETERS,

Petitioner,

v.

VILLAGE OF CLIFTON, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE AMERICAN FARM BUREAU FEDERATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Supreme Court Rule 37.2(b), the American Farm Bureau Federation ("Farm Bureau") moves for leave to file the attached brief *amicus curiae*. Counsel for petitioner has consented to the filing of this brief and a copy of that consent has been filed with the Clerk. Counsel for respondent has declined to consent.

The Farm Bureau is a voluntary general farm organization established in 1919 to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers. Farm Bureau has member organizations in 50 states and Puerto Rico, representing more than 6.2 million member families. It has regularly participated as *amicus curiae* in this Court in cases involving the interpretation of the Takings Clause of the Fifth Amendment to the Constitution, including *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003 (1992), *Dolan* v. *City of Tigard*, 512 U.S. 374 (1994), *Suitum* v. *Tahoe Regional Planning Agency*, 520 U.S. 725 (1997), *City of Monterey* v. *Del Monte Dunes*, 526 U.S. 687 (1999), and *Palazzolo* v. *Rhode Island*, 533 U.S. 606 (2001).

Farm Bureau's members own or lease substantial amounts of land, on which they depend for their livelihoods and on which all Americans depend for the supply of high quality, affordable food, fiber, and other basic necessities. Because that land is subject to increasingly onerous regulation from all levels of state and local government—as well as to the sort of competing uses that resulted in a physical invasion of petitioner's farmland in this case—Farm Bureau and its members are vitally interested in the proce-

dural rules surrounding claims to just compensation under the Takings Clause.

In particular, Farm Bureau believes the exhaustion of state remedies requirement set forth in *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 195 (1985)—when combined with standard rules of issue and claim preclusion applied by federal courts—effectively denies its members a federal forum for their federal takings claims, and thereby improperly relegates the Takings Clause "to the status of a poor relation" to other provisions of the Bill of Rights. *Dolan*, 512 U.S. at 392. Added on top of already onerous ripeness standards, the exhaustion requirement also guarantees that, even if a claim could survive preclusion rules, most farmers and ranchers could not hope to sustain the cost of complex litigation to vindicate Fifth Amendment rights through a state court trial and multiple appeals before reaching a federal forum.

As members of this Court have already recognized, the reasoning of *Williamson County* is seriously flawed. Its exhaustion holding has no basis in the language or history of the Fifth Amendment and does not warrant *stare decisis*. That holding has done enough damage to the individual rights of property owners and should now be overruled.

Given its long-standing interest in Takings Clause jurisprudence and the experience of its members with *Williamson County*, the Farm Bureau believes that its perspective regarding the need to revisit that decision's exhaustion requirement will be useful to the Court. Farm Bureau thus requests this Court grant its motion for leave to file the attached brief *amicus curiae* in support of petitioner.

Respectfully submitted.

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QUESTION PRESENTED

Whether this Court should overrule *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 195 (1985), insofar as it held that property owners must pursue a compensation claim in state court in order to ripen a federal takings claim.

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BRIEF AMICUS CURIAE OF THE AMERICAN FARM BUREAU FEDERATION

INTEREST OF THE AMICUS CURIAE

The interest of the *amicus curiae* American Farm Bureau Federation is set forth in the preceding motion for leave to file.[1]

SUMMARY OF ARGUMENT

The Framers of our Constitution placed property rights on equal footing with the other civil rights guaranteed in the Bill of Rights. The state litigation requirement invented in *Williamson County*, in contrast, operates in concert with full faith and credit requirements to make property a second-class right, effectively precluding federal litigation of takings violations against states and their subdivisions.

Two years ago, Chief Justice Rehnquist and Justices Kennedy, Thomas, and O'Connor suggested the time had come for this Court to reconsider *Williamson County*. This case is an appropriate vehicle in which to do so. Because *Williamson County* creates an unintended trap for takings litigants, denies a federal forum for the vindication of federal rights, creates unnecessary expense for litigants, and intended none of those consequences, it is untenable. *Stare decisis* is not required where, as here, a prece-

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[1] This brief was not authored in whole or part by counsel for a party, and no person other than the *amicus curiae*, its members, and its counsel made a monetary contribution to its preparation and submission. *Amicus* Farm Bureau timely notified counsel for the parties of its intent to file this brief.

dent is unworkable, its reasoning is flawed, and it has been undermined by later doctrine.

ARGUMENT

"[P]rotection of private property was a nearly unanimous intention among the founding generation." Michael McConnell, *Contract Rights and Property Rights*, 76 CAL. L. REV. 267, 270 (1988). The Framers viewed the protection of property rights, and particularly rights in land, as "the first object of government." FEDERALIST NO. 10 (Madison) (C. Rossiter ed. 1961). That conviction rested on the Framers' understanding that private property constitutes "the clear, compelling, even defining, instance of the limits that private rights place on legitimate government." JENNIFER NEDELSKY, PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM 9 (1990). Indeed, the Framers understood government to be "instituted no less for protection of the property, than of the persons, of individuals." FEDERALIST NO. 54, *supra*, at 339 (Madison). Accordingly, the Takings Clause, a bulwark against arbitrary rule that fosters respect for individuals and their rights to use and reap the benefits of their property, is fundamental to our constitutional order. As Chief Justice Rehnquist wrote for the Court, there is "no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation." *Dolan* v. *City of Tigard*, 512 U.S. 374, 392 (1994).

Yet that is precisely the effect of this Court's holding two decades ago in *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 195 (1985), that "if a State provides an adequate procedure for seeking just compensation, the prop-

erty owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." For, outside the takings context, it is the "general rule" that "plaintiffs who believe that they have been deprived of some federal constitutional right by state or local officials acting under color of law may bring an action in federal district court under 42 U.S.C. § 1983 without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." DAVID DANA & THOMAS MERRILL, PROPERTY: TAKINGS 262 (2002). In contrast to the state litigation (including appeals) required before a property owner may bring a Takings Clause action in federal court, "when an individual claims that his Fourth Amendment rights have been violated by an unwarranted search or seizure, he may bring a Section 1983 action without first bringing a state court tort action for trespass or battery." *Ibid.* And he may do so even though a state court tort action might redress the alleged violation as surely as a state court inverse condemnation claim might provide the compensation a landowner claims is due.

The impact of the *Williamson County* exhaustion requirement is that—unlike with other constitutional claims that may be brought under Section 1983—a takings plaintiff is denied an effective federal forum to vindicate its federal constitutional rights. The Takings Clause has attained the "poor relation" status *Dolan* warned against. If the landowner attempting to exhaust state remedies asserts a claim for compensation under the Fifth Amendment in state court, the state court's ruling on that claim will be binding in any subsequent federal takings suit under federal claim preclusion rules. If the landowner instead limits its state suit to state in-

verse condemnation or similar state law claims, the state court invariably will make determinations in that suit regarding issues that are also critical to a federal takings claim, and those determinations will bind a federal court considering a subsequent Fifth Amendment suit under normal federal issue preclusion rules. See generally RICHARD H. FALLON ET AL., HART & WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1406 (5th ed. 2003).

"As a result" of this "'*Williamson* trap,'" two leading scholars have observed, "there is almost no way to meet ripeness requirements for a takings challenge in federal court" and to avoid issue or claim preclusion. DANA & MERRILL, *supra*, at 263-264. A federal takings claim brought after satisfying *Williamson County's* exhaustion requirement may be "nominally permissible," but in fact it is "pointless." *Id.* at 264. It would be a waste of landowner and judicial resources, and even attempting it—after state court trial and appeals—would be prohibitively costly for most of *amicus* Farm Bureau's members.

This substantial burden on the vindication of property rights protected by the Constitution cannot be justified. Principles of *stare decisis* do not require that this Court continue to adhere to such a thoroughly mistaken precedent. Sound legal and policy reasons require that property owners should have access to a federal forum, like those complaining of the violation of other provisions of the Bill of Rights.

I. This Case Is An Appropriate Vehicle, And The Time Is Right, To Reconsider *Williamson County*.

Two years ago, Justices Kennedy, Thomas, and O'Connor joined Chief Justice Rehnquist in suggest-

ing that this Court should reconsider the state-litigation requirement of *Williamson County* in an "appropriate case." *San Remo Hotel* v. *City & County of San Francisco*, 545 U.S. 323, 352 (2005) (Rehnquist, C.J., concurring). In *San Remo* itself, the takings plaintiff had not preserved the argument that this aspect of *Williamson County* should be overruled. No such barrier to correcting the law exists here. This case presents a perfect vehicle, with no procedural defects. And because respondents are alleged to have engaged in a physical taking, final action is clearly involved and only the second prong of the *Williamson County* test—whether state litigation of just compensation is required to ripen the claim—is at issue.

San Remo arose from the efforts of courts of appeals to avoid the "*Williamson* trap." That trap occurs because *Williamson County's* state litigation requirement for a ripening takings claim in federal court necessarily precludes the case's subsequent litigation in federal court as a consequence of the full faith and credit statute, 28 U.S.C. § 1738. To avoid the unfair and constitutionally suspect results of the exhaustion rule, courts of appeals simply declined to apply full faith and credit to state court judgments. See, *e.g.*, *DLX, Inc.* v. *Kentucky*, 381 F.3d 511, 520-521, 523-524 (6th Cir. 2004) (avoiding the "unanticipated effect of *Williamson County*"); *Santini* v. *Connecticut Hazardous Waste Mgt. Serv.*, 342 F.3d 118, 127-130 (2d Cir. 2003) (avoiding the "ironic and unfair" "Catch-22" of *Williamson County*); *Front Royal & Warren County Indus. Park Corp.* v. *Town of Front Royal*, 135 F.3d 275, 283 (4th Cir. 1998); *Fields* v. *Sarasota Manatee Airport Auth.*, 953 F.2d 1299, 1303-1307 (11th Cir. 1992).

In *San Remo*, this Court disapproved these end-runs around the full faith and credit statute.[2] But in so doing it unleashed the full force of *Williamson County's* exhaustion rule. By completely shutting the preclusion trap on would-be federal takings plaintiffs, *San Remo* made clear to the four concurring Justices the need to revisit *Williamson County*. After *San Remo*, the "unanticipated effect of *Williamson County*" can no longer be avoided, so it is time to fix *Williamson County*.[3]

II. *Williamson County's* Exhaustion Requirement Does Not Warrant *Stare Decisis*.

"'*[S]tare decisis* is not an inexorable command.'" *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997) (quoting *Payne* v. *Tennessee*, 501 U.S. 808, 828 (1991)). It is strong when the settled question is one of statutory interpretation. *Leegin Creative Leather Prods.* v. *PSKS, Inc.*, 127 S. Ct. 2705, 2720 (2007). But *stare decisis* is less compelling when dealing with common-law style doctrines, *ibid.*, or constitutional prece-

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[2] At least one circuit has already engaged in a new form of self-help, refusing to consider state litigation part of the procedures required by *Williamson County's* second prong. See *Asociación de Subscripción Conjunta del Seguro de Responsibilidad Obligatorio* v. *Flores Galarza*, 484 F.3d 1, 17 (1st Cir. 2007) ("In our view, such procedures do not include litigation of a state takings claim or any general remedial cause of action under state law"). *Flores Galarza* has created a split in the circuits on the matter. See *Peters* v. *Village of Clifton*, 498 F.3d 727, 733 n.6 (7th Cir. 2007).

[3] *San Remo's* majority offered reasons for keeping *Williamson County*, but did not disavow the wisdom of reconsideration. The majority merely concluded that "[w]hatever the merits of that concern may be, we are not free to disregard the full faith and credit statute." 545 U.S. at 347.

dents. *Agostini* v. *Felton*, 521 U.S. 203, 235 (1997). Regardless whether *Williamson County* is viewed as a constitutional decision or a prudential one developed through common law principles, twenty-three years of the failed *Williamson County* experiment have been enough.[4] *Cf. Khan*, 522 U.S. at 7 (overturning *Albrecht* v. *Herald Co.*, 390 U.S. 145 (1968), after 29 years); *Agostini*, 521 U.S. at 208-209 (overturning *Aguilar* v. *Felton*, 473 U.S. 402 (1985), after 12 years); *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 530-531 (1985) (overturning *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), after 9 years).

The considerations that guide this Court when deciding to overrule a prior precedent are well established. "'When governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent.'" *Seminole Tribe* v. *Florida*, 517 U.S. 44, 63 (1996) (quoting *Payne*, 501 U.S. at 827). In addition, the Court considers the extent that the prior precedent has been relied upon by the public in arranging daily life and business. *Leegin*, 127 S. Ct. at 2724. And the Court has "overruled * * * precedents when subsequent cases have undermined their doctrinal underpinnings." *Id.* at 2721 (quoting *Dickerson* v. *United States*, 530 U.S. 428, 443 (2000)). All of these considerations argue for overturning *Williamson County*.

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[4] The question whether the ripeness requirements of *Williamson County* are constitutional or prudential has been "conspicuously" left open and need not be resolved here. 545 U.S. at 351 n.2. Overruling is appropriate in either case.

A. *Williamson County's* Flawed Reasoning Has Resulted In A Scheme That Is Unworkable In Practice.

Chief Justice Rehnquist's *San Remo* concurrence observed that "real anomalies" are created by *Williamson County* that justify revisiting the decision. 545 U.S. at 351. In combination with full faith and credit principles, forced litigation of takings claims in state court denies the possibility of a subsequent federal forum, in contrast to Section 1983's provision of a federal forum for the vindication of other constitutional rights. The self-help employed by courts of appeals prior to *San Remo* to avoid the strictures of the exhaustion rule offers compelling evidence that *Williamson County* is unworkable in practice.

It is not surprising that *Williamson County* created a quagmire. *Williamson County* failed to consider the impact of preclusion. The Court clearly thought the claim at issue could eventually ripen and be heard in a federal forum. 473 U.S. at 194 ("the taking claim is not *yet* ripe"); *id.* at 195 ("the property owner cannot claim a violation * * * *until* it has used the procedure") (emphases added). "Reliance on the ripeness rationale [of *Williamson County*], unfortunately, suggests to property owners that their complaints will be ripe and heard in the federal courts after their state suits are over." Thomas Roberts, *Fifth Amendment Taking Claims in Federal Court: The State Compensation Requirement and Principles of Res Judicata*, 24 URB. LAW. 479, 480 (1992).

If the Takings Clause is really "as much a part of the Bill of Rights as the First Amendment or Fourth Amendment" and is not "a poor relation" of other rights, *Dolan*, 512 U.S. at 392, preclusion rules—as

reinforced by *San Remo*—leave *Williamson County's* exhaustion rule unworkable. As this Court described in *Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972), "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law." *Williamson County*, in unintended consort with full faith and credit, takes the federal courts out of that guardian role in the case of federal just compensation rights.

With no briefing of the critical issues, *Williamson County* was not well or fully reasoned.[5] As the concurring Justices in *San Remo* pointed out, the two cases employed to create the state-litigation rule "provided limited support" for the position. 545 U.S. at 349 n.1. *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986 (1984), is discussed in Part III below. The second case, *Parratt* v. *Taylor*, 451 U.S. 527 (1981), was acknowledged by the *Williamson County* Court as an "imperfect" analogy. 473 U.S. at 195 n.14.

Parratt, according to *Williamson County*, held that property deprivation by a state employee's unauthorized act did not present a Due Process claim unless the state failed to provide adequate postdeprivation process. 473 U.S. at 195. But the requirement of *post*deprivation process in *Parratt* resulted because *pre*deprivation process would be impossible,

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[5] The state litigation requirement leading to the preclusion problem was not argued for by any of the twelve merits briefs in *Williamson County* with the exception of a single paragraph in the *Summary of Argument* section of the Solicitor General's amicus submission. See *Brief for the United States as Amicus Curiae Supporting Petitioners* at 10 (No. 84-4) (Nov. 15, 1984).

as unauthorized acts by state employees could not be anticipated with any regularity. In contrast, a taking virtually always occurs pursuant to established state policies or procedures that are foreseeable. See *id.* at 195 n.14. More important, a taking is complete after either the first prong of *Williamson County's* ripeness requirement is satisfied or, as here, a physical invasion has occurred. Therefore, unlike in *Parratt*, a violation does not need to be anticipated, rather it has already occurred. Additional postdeprivation process—in the form of state court litigation no less—is not required to ripen the constitutional violation. Neither logic, nor analogy to *Parratt*, supports *Williamson County's* second prong.

B. *Williamson County* Is Not Relied Upon By The Public.

No evidence suggests public reliance upon *Williamson County's* state litigation requirement. It is hard to fathom anyone relying upon a decision characterized in terms of its "*Alice in Wonderland* quality" and described as creating "a procedural morass, a labyrinth," a "quagmire," a "Kafkaesque maze, a fraud or hoax on landowners, a weapon of mass obstruction, and a Catch-22." Michael M. Berger & Gideon Kanner, *Shell Game! You Can't Get There From Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches the Self-Parody Stage*, 36 URB. LAW. 671, 702-703 (2004) (cataloguing courts' and commentators' characterizations of *Williamson County*). Rather, the fact that farmers like petitioner Peters and other property owners are still litigating in federal court and thus getting stuck in the *Williamson County* trap, combined with the courts of appeals' efforts to skirt *Williamson County*, suggest that there is widespread

dissatisfaction with and misunderstanding of *Williamson County*. Precedent is not due respect when it "creat[es] legal distinctions that operate as traps for the unwary." *Leegin*, 127 S. Ct. at 2723.

C. *Williamson County's* Doctrinal Underpinnings Have Eroded Away.

Where a precedent "has been widely criticized since its inception," as is the case here, this Court may properly reconsider it. *Khan*, 522 U.S. at 21. *San Remo* is not the only case to make *Williamson County* untenable.

In *City of Chicago* v. *Int'l College of Surgeons*, 522 U.S. 156, 163 (1997), this Court found removal to federal court appropriate for a federal takings claim, because under 28 U.S.C. § 1441(a), removal is proper when "the case originally could have been filed in federal court." But under *Williamson County*, such claims could not be filed in federal court, because they would not be ripe. The Eighth Circuit has since recognized the "anomalous * * * gap in Supreme Court jurisprudence" between *City of Chicago* and *Williamson County*, but observed that fixing that gap "is for the Supreme Court to say, not us." *Kottschade* v. *City of Rochester*, 319 F.3d 1038, 1041 (8th Cir. 2003).

Furthermore, by precluding federal takings claims, the *Williamson* trap effectively denies takings litigants the right to a jury trial guaranteed in *City of Monterey* v. *Del Monte Dunes*, 526 U.S. 687 (1999).

Finally, as already discussed, *Williamson County's* restrictions fly in the face of *Dolan*'s mandate that the Takings Clause not be treated as a sec-

ond-class right compared to others provided by the Bill of Rights.

III. *Williamson County's* Exhaustion Requirement Is Fundamentally Mistaken And Especially Harmful To Farmers And Ranchers.

A. The State Litigation Rule Is Illogical.

Williamson County essentially requires that state trial and appellate courts must have certified a local authority's denial of compensation in order to ripen a federal takings claim. Treating state courts and takings authorities as a monolith in this way undermines the separation of powers that makes state courts sufficiently neutral to arbitrate disputes between private litigants and local agencies. Consolidation of the two does not afford state courts the respect justified by the principles of comity espoused in *San Remo,* 545 U.S. at 345 (noting "weighty interests in * * * comity").

Applying *Williamson County's* logic to another government against which the Takings Clause applies—the federal government—illuminates its absurdity. If applied to a just compensation claim against the federal government, *Williamson County* would nonsensically allow the claim to ripen for federal court adjudication only *after* the federal court had already heard the claim and denied it. This chicken-egg circularity is dizzying.[6] The absurdity

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[6] The *San Remo* concurrence observed that some state courts have applied a similar analogy to find the state-litigation requirement precludes them from hearing federal takings claims. These state courts reason that they must abide by the state-litigation requirement before the federal takings claim can ripen in their own court. 545 U.S. at 351 n.2.

may explain why the Court has *not* required state litigation prior to ripening any other § 1983 claim. See, *e.g.*, *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961) ("It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked").

To be sure, *Williamson County* asserted that the same rule *does* apply against the federal government: "we have held that taking claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act, 28 U.S.C. § 1491." 473 U.S. at 195 (citing *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986 (1984)). But that is plainly incorrect. The Tucker Act permits claims for just compensation from the federal government in the same manner that § 1983 provides for such claims against a local entity acting under color of state law. But the Tucker Act does not establish a prerequisite to bringing a just compensation claim in federal court: that would make it a prerequisite to itself. Every Tucker Act decision before and since *Williamson County*, including the *Monsanto* case cited in *Williamson County*, merely held that a just compensation claim was a prerequisite to enjoining federal actions or striking down federal provisions as unconstitutional under the Takings Clause. See, *e.g.*, *Preseault* v. *Interstate Commerce Comm'n*, 494 U.S. 1 (1990); *Monsanto*, 467 U.S. 986; *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974). Peters seeks to do nothing more than *Monsanto* allowed in the Tucker Act context: to bring his just compensation claim in federal court.

This Court has recognized that "[t]here are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider federal constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims." *England* v. *Louisiana Bd. of Medical Examiners*, 375 U.S. 411, 415 (1964). To remedy those objections, the answer is not to ignore the full faith and credit statute as courts of appeals did prior to *San Remo*, but to eliminate *Williamson County's* state-litigation requirement.

B. Farmers And Ranchers Are Particularly Harmed By *Williamson County*.

"Considerations of fairness and justice" should be considered in takings jurisprudence. *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U.S. 302, 333 (2002). Farmers and ranchers are increasingly burdened by *Williamson County* as the expanding rural-urban interface leads to conflicts between growing municipalities and the agricultural lands once on the outskirts of town, as here. Between 1992 and 2001, when over 20 million acres of land were developed, half of those acres were agricultural lands. NATURAL RESOURCES CONSERVATION SERVICE, NATIONAL RESOURCES INVENTORY 2001 ANNUAL NRI: URBANIZATION AND DEVELOPMENT OF RURAL LAND (2001) (available at http://www.nrcs.usda.gov/technical/land/nri01).

The Framers would have understood protecting the rights of farmers and ranchers from encroaching suburbia. For them, "[p]lacing legal boundaries around issues such as property rights" isolated "these issues from popular tampering, partisan de-

bate, and the clashes of interest-group politics. Some things, including the power to define property and interpret constitutions, became matters not of political interest to be determined by legislatures but of the 'fixed principles' of law to be determined only by judges." GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 324-325 (First Vintage Books ed. 1993). In states where judges are elected, the absence of a federal forum leaves farmers and ranchers to the will of the popular tampering that property rights were meant to protect.

Farmers and ranchers are already disadvantaged in a legal system where agriculture's dirt rich, dollar poor nature leaves many without the liquidity to engage in lengthy legal battles. See Gregory M. Stein, *Regulatory Takings and Ripeness in the Federal Courts*, 48 VAND. L. REV. 1, 43 (1995) ("Practically speaking, the universe of plaintiffs with the financial ability to survive the lengthy ripening process is small"). And in more rural communities, where farmlands are worth less and farmers may be not only dollar poor, but also land poor, the litigation costs of seeking just compensation often exceed the value of the property. *Williamson County's* removal of the threat of federal court review of a takings claim exacerbates the problem, making it harder for farmers and ranchers to vindicate their rights in a cost efficient and effective manner.

Nor is the loss to farmers and ranchers of viable federal takings claims costless to society. As this case illustrates, the loss of farmland to encroaching development activities like those of respondents all too readily may occur. The loss of productive farmland has the potential to impact the provision of affordable food and other agricultural commodities. And

the environmental impacts of encroachments on vulnerable agricultural land at the rural-urban interface are staggering. See, *e.g.*, RALPH E. HEIMLICH & WILLIAM D. ANDERSON, U.S. DEP'T OF AGRIC., DEVELOPMENT AT THE URBAN FRINGE AND BEYOND: IMPACTS ON AGRICULTURE AND RURAL LAND 33 (2001); J. BISHOP GREWELL & CLAY J. LANDRY, ECOLOGICAL AGRARIAN: AGRICULTURE'S FIRST EVOLUTION IN 10,000 YEARS 92 (2003) ("Three-quarters of the wildlife in the U.S. live on farm and ranch lands").

If farmers and ranchers cannot defend their land from physical invasions as outrageous as those alleged by petitioner Peters by wielding the threat of a federal just compensation suit, all the benefits to our Nation of such land are at risk. This Court should grant certiorari in this case and overrule *Williamson County's* state litigation rule to restore Fifth Amendment rights that otherwise will be effectively meaningless.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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